IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1844 OF 2005
IN
CRIMINAL APPEAL NO.299 OF 2005

Shri Parvez Ali Mohammad
Ali Kadari ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. R.V. Gupta for the applicant.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 7th April, 2005

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. Applicant who is an original accused No.2 was convicted by the 6th Ad-hoc Additional Sessions Judge, Mumbai for an offence punishable under sections 365 read with section 34, 332 read with section 34, 333 read with section 34, 307 read with section 34 and 393 read with section 398 and was sentenced to suffer R.I. for three years on first two counts, R.I. for five years on third and fourth count and R.I. for seven years on fifth count.

3. Prosecution case in brief is that the complainant

- Pradeep Dagdu Bankhele was serving as Police Head Constable and was attached to the Crime Detection Branch since 1998. On 2/2/2001, he and Police Constable Ashok Bhosale were on duty. At about 2.30 a.m. they saw one Tata Seira motor car near fire brigade centre. They noticed that three persons were sitting in the car under suspicious circumstances. He, therefore, asked those people to get down. They disclosed their names to them. The complainant asked the occupants of the car to come to the Deonar Police Station as the occupants had failed to produce the licence and other papers regarding the ownership of the car. After they sat in the car, they were assaulted by the occupants with weapons and they were thrown out of the car when it reached K.T. Junction.

4. The learned counsel appearing on behalf of the applicant has submitted that no test identification parade has been held and there are various lacunae in the statements of the two eye witnesses. He has invited my attention to the judgment and order of the trial court and also the evidence of the eye witnesses. He has submitted that since the accused were not known to the eye witnesses, it was necessary for the prosecution to have held the test identification parade. He submitted that in view of

this serious lacuna, the applicant was entitled to be released on bail.

5. I am unable to accept the submissions made by the learned counsel for the applicant. Both the eye witnesses have identified the accused in court. They have given clear and cogent evidence which has been accepted by the trial court. The applicant had used lethal weapons on Police Officer. The Supreme Court has held in number of cases that merely because test identification parade is not held that by itself would not be a ground to discard the testimony of the eye witnesses. This is, therefore, not a fit case for grant of bail. Application for bail is rejected.

V.M. KANADE, J.